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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6575

DATE COMPLAINT FILED: May 11, 2012

DATE OF NOTIFICATION: May 17, 2012

DATE OF LAST RESPONSE: June 1, 2012

DATE ACTIVATED: July 19, 2012

EXPIRATION OF SOL: March 20, 2017

COMPLAINANT:

Wade Freedle

RESPONDENTS:

Lisa Buescher¹

State of California

Doug LaMalfa

Doug LaMalfa Committee

David Bauer in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)

2 U.S.C. § 434(b)

2 U.S.C. § 441a(a)(1)(A)

2 U.S.C. § 441a(f)

11 C.F.R. § 100.52

11 C.F.R. § 100.54

11 C.F.R. § 100.74

INTERNAL REPORTS CHECKED:

Commission Database

OTHER AGENCIES CHECKED:

None

¹ This respondent was identified in the complaint as Lisa "Busher." She was subsequently identified as Lisa "Buescher" in responses to the complaint, and the name was changed accordingly.

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I. INTRODUCTION

The Complaint alleges that congressional candidate Doug LaMalfa, the State of California, and Lisa Buescher violated the Federal Election Campaign Act of 1971, as amended, (the "Act") when Buescher, a state employee, spoke at a candidate forum on behalf of LaMalfa. Respondents provided information, including an affidavit from Buescher, showing that Buescher used bona fide vacation leave to attend the forum. Based on the available information, we recommend the Commission find no reason to believe that respondents violated 2 U.S.C. §§ 434(b) or 441a and close the file.

II. FACTS

Doug LaMalfa was a candidate for the First Congressional District of California in 2012. The Doug LaMalfa Committee (the "Committee") is LaMalfa's congressional principal campaign committee, and David Bauer is the Committee's treasurer.

LaMalfa also was a sitting California State Senator during the relevant period.² Lisa Buescher served as LaMalfa's State District Director during the relevant period. *See* Doug LaMalfa Committee Supp. Resp., Attach. at 1 ("Buescher Decl.").

The complaint alleges that Buescher, a paid state employee, attended a candidate forum on behalf of LaMalfa to promote LaMalfa's congressional candidacy. *See* Compl. at 1. The forum was held by the Nevada County Republican Women Federated ("NCRWF") political organization March 20, 2012, at the Alta Sierra Country Club in Grass Valley, California. *Id.* The forum provided an opportunity for Republican candidates for various federal and state offices to present their qualifications and platforms. *See* Compl. The minutes of the program, attached as an Exhibit to the Complaint, show that the forum was set up so that each candidate

² LaMalfa resigned his state senate position on August 31, 2012 to focus on the November 2012 general election, which he won. *See* Doug LaMalfa Committee Supp. Resp. at 1 (November 13, 2012).

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1 or representative was allowed to speak for five minutes and answer questions after the forum.
2 *See* Compl., Ex. 2. According to the NCRWF minutes, 13 candidates or their representative
3 attended the forum, including "US Cong. Rep. Dist. 1, District director for incumbent Doug
4 LaMalfa, Lisa Buser [sic]." *Id.* The minutes indicate that the forum began at 12:03 p.m. and
5 ended at 1:33 p.m., and candidates stayed after the forum to answer questions. A total of 90
6 NCRWF members and guests attended the forum. *Id.*

7 In a sworn declaration, Buescher acknowledges that she attended the forum at LaMalfa's
8 request and promoted LaMalfa's candidacy while there.³ *See* Buescher Decl. at 1. Buescher
9 attests that, consistent with LaMalfa's office policy regarding political activity by employees,
10 she took four hours of vacation time, in addition to her lunch hour, to attend the forum.⁴ *Id.* at
11 2-3.

12 The California Office of the Attorney General ("California Attorney General"), whom
13 CELA notified on behalf of the State of California, asserts that the California Attorney General
14 has no supervisory role over LaMalfa or Buescher and does not represent members of the State
15 Legislature. California Attorney General Resp. (June 1, 2012). The California Attorney
16 General also states that it had no specific knowledge regarding Complainant's allegations and
17 requested that no action be taken against the State of California. *Id.*

³ On August 10, 2012, we offered the Committee an opportunity to voluntarily supplement its initial May 21, 2012, response. The Committee submitted a supplemental response on November 13, 2012, that included Buescher's declaration; Buescher had not previously responded individually to the complaint. Buescher's declaration referenced and purported to attach a copy of her official vacation leave record and a copy of an e-mail communicating her leave request to LaMalfa's Senate Chief of Staff. Buescher Decl. at 2. Despite the citations, however, the declaration did not include either document as an attachment. We received the previously missing attachments on November 27, 2012.

⁴ Buescher declares that she was entitled to one hour of leave time for lunch during her work day as a state senate employee. Buescher Decl. at 3.

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III. LEGAL ANALYSIS

The Complaint alleges that Buescher's attendance at the forum resulted in an excessive in-kind contribution to the Committee that was not disclosed to the Commission in violation of the Act.

A contribution includes anything of value made by any person for the purpose of influencing any election for federal office or the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose. *See* 2 U.S.C. § 431(8)(A); 11 C.F.R. §§ 100.52, 100.54.

Under the Commission's regulations, however, no contribution results if an employee uses bona fide paid vacation or other earned leave time to engage in political activity. *See* 11 C.F.R. § 100.54(c). The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee does not constitute a contribution. *See* 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74.

A person may not contribute more than an aggregate of \$2,500 to any candidate and his authorized political committees for a federal election during the 2011-2012 election cycle. 2 U.S.C. § 441a(a)(1)(A). The Commission treats state governments as persons subject to the contribution limits.⁵ *See, e.g.,* MUR 5127 (Dem. Party of Illinois) (states are persons subject to contribution limits). A political committee is prohibited from knowingly accepting any contribution in excess of the contribution limits. 2 U.S.C. § 441a(f). Contributions to political committees must be disclosed to the Commission. 2 U.S.C. § 434(b).

⁵ The only specific exclusion from the term "person" is the federal government and its related entities. *See* 2 U.S.C. § 431(11); 11 C.F.R. § 100.10.

1 Buescher admits that she attended the NCRWF forum on behalf of LaMalfa. Buescher
2 provided information showing, however, that she used four hours of bona fide vacation leave, in
3 addition to her lunch hour, to attend the forum. Because Buescher used bona fide vacation
4 leave to attend the forum, the value of her time is not a contribution to the Committee. *See*
5 11 C.F.R. § 100.54(c); MUR 5127 (contending that there was no contribution to the party
6 committee where chief of staff for state representative who served as executive director of a
7 party committee used accrued leave to perform party activities during business hours).

8 Therefore, we recommend that the Commission find no reason to believe that Lisa
9 Buescher and the State of California violated 2 U.S.C. § 441a(a)(1)(A); that Doug LaMalfa
10 violated 2 U.S.C. § 441a(a)(1)(A) or 441a(f); and that Doug LaMalfa Committee and David
11 Bauer in his official capacity as treasurer violated 2 U.S.C. §§ 434(b) or 441a(f).

12 IV. RECOMMENDATIONS

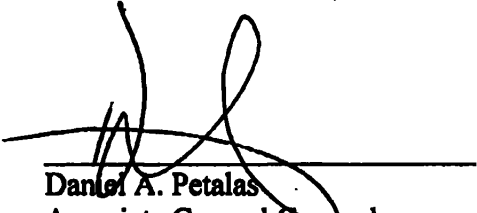
- 13 1. Find no reason to believe that Lisa Buescher violated 2 U.S.C. § 441a(a)(1)(A);
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- 15 2. Find no reason to believe that Doug LaMalfa violated 2 U.S.C. §§ 441a(a)(1)(A) or
16 441a(f);
17
- 18 3. Find no reason to believe that the State of California violated 2 U.S.C.
19 § 441a(a)(1)(A);
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- 21 4. Find no reason to believe that Doug LaMalfa Committee and David Bauer in his
22 official capacity as treasurer violated 2 U.S.C. §§ 434(b) or 441a(f);
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- 24 5. Approve the attached Factual and Legal Analysis;
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- 26 6. Approve the appropriate letters; and

1 7. Close the file.

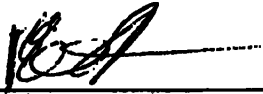
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11/28/12
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